

ADVISORY COMMITTEE ON RULES FOR CIVIL PROCEDURE
Office of the Secretary
Supreme Court of the United States Building
Washington, D. C.

20
27
13 a

February 20, 1937

To the Members of the Sub-Committee
on Style and Form:

Enclosed herewith is a loose-leaf binder containing a mimeographed copy of a draft of the rules into which have been incorporated the changes made by the Committee at its meeting, February 4 - 4, 1937.

Your attention is called to the attached letter of transmittal which accompanies the copies of this draft sent to members who are not on the Style Committee.

If the members of the Style Committee wish to have their suggestions mimeographed and distributed to other members, the Secretary's office will attempt to attend to this work as promptly as possible.

A duplicate copy of the draft is enclosed for working purposes, and with the idea that you may wish to note your suggestions at appropriate places on the margin of this copy and return it to the Secretary's office where we can attend to whatever compilation, mimeographing and distribution may be desired.

Also enclosed is a mimeographed copy of the stenographer's transcript of the proceedings at the February meeting.

Very sincerely,

Edgar B. Tolman.

ADVISORY COMMITTEE ON RULES FOR CIVIL PROCEDURE
Office of the Secretary
Supreme Court of the United States Building
Washington, D. C.

February 20, 1937

To the Members of the Advisory Committee:

Enclosed is a mimeographed redraft of the rules into which have been incorporated the changes which the Committee directed at its meeting, February 1 - 4, 1937.

Throughout this draft, marginal notes have been added to call attention to particular matters in the rules which the General Committee referred to the Style Committee, or concerning which they especially asked for further suggestions from members of the full Committee. Where there was some doubt as to the exact phraseology to be used, or where the previous draft seemed to require clerical correction not expressly directed by the Committee, bracketed phraseology or alternative wordings have been inserted, accompanied by explanatory marginal notes when they were necessary.

For your convenience, the proposed rule on condemnation, my memorandum and the list of statutes have been placed in the enclosed set of rules after the present Rule 82.

A table of contents is appended, and since the index handed you at the beginning of the last meeting does not need material revision on account of the changes made at that meeting, it may be used in connection with this draft.

Additional copies of the Appendix of Forms, as they were last amended and distributed, will be sent upon request.

It will be remembered that at the February meeting the Chairman suggested that all members of the Committee who desire to make comment or suggestion upon this draft might send their suggestions to the Secretary's office for mimeographing and distribution to the Style Committee and other members, in order to secure a possible exchange of views. It will be appreciated if the members will send in their comments as soon as they conveniently can in order that the mimeographing and distribution may be facilitated and spread as evenly as possible.

Yours very truly,

Edgar B. Tolman.

P. D. Feb., 1937
Rule 90

I. APPLICABILITY OF THE RULES

- 1 Rule 90. Application to District Courts;
- 2 The District of Columbia; State Law Defined;
- 3 Removed Actions; Actions before a Special
- 4 District Court; Actions Under the United
- 5 States Arbitration Act.
- 6 (a) District Courts. These rules shall not
- 7 apply to proceedings in admiralty, to proceedings
- 8 in bankruptcy or copyright, except in so far as
- 9 they may be made applicable thereto by rules pro-
- 10 mulgated by the Supreme Court of the United States,
- 11 (2) to proceedings in probate in the District Court
- 12 of the United States for the District of Columbia
- 13 or to the following proceedings ^(u) ~~except appeals~~ *up to and including entry of judgment*
- 14 ~~therein~~ proceedings for admission to citizenship,
- 15 proceedings in habeas corpus, quo warranto pro-
- 16 ceedings [action of quo warranto] and proceedings
- 17 ~~[in rem]~~ for the forfeiture of ~~[specific]~~ property
- 18 ~~[for violation of]~~ [under] any statute of the
- 19 United States. ^{up to and including entry of judgment} Proceedings for admission to
- 20 citizenship, proceedings in habeas corpus, quo
- 21 warranto proceedings [actions of quo warranto]
- 22 and proceedings ~~[in rem]~~ for the forfeiture of
- 23 ~~[specific]~~ property ~~[for violation of]~~ [under]
- 24 any statute of the United States, shall be gov-
- 25 erned [by existing [applicable] statutes of the
- 26 United States] ~~[as provided by law and statutes of~~
- 27 ~~the United States]~~

NOTE:- Placement and phraseology of habeas corpus, mandamus and quo warranto proceedings left to Style Committee. Rules to state somewhere "scire facias is abolished".

up to and including the entry of judgment, except in so far as the rules are otherwise provided by statute of the U.S.

Not clear

P. D. Feb., 1937
 Rule 90
 page 2

28 (aa) Mandamus Proceedings. Proceedings for
 29 mandamus authorized by the Act of August 26, 1935,
 30 c. 687, Title I, § 18, 49 Stat. 831, U.S.C., Title
 31 15, § 79r(g),

32 [other statutes to be placed here]
 33 and other [similar] statutes of the United States
 34 shall be treated as actions in which the relief
 35 sought is a mandatory injunction and the plead-
 36 ings and practice shall conform to these rules
 37 so far as applicable.

38 (b) The District of Columbia. Whenever
 39 in these rules reference is made to a district
 40 court or to a district judge, the reference shall
 41 be taken to include also the District Court of
 42 the United States for the District of Columbia
 43 and a justice thereof; and whenever in these
 44 rules reference is made to a circuit court of
 45 appeals or to a judge thereof, the reference
 46 shall be taken to include also the United States
 47 Court of Appeals for the District of Columbia
 48 and a justice thereof. Whenever in these rules
 49 the law of the state wherein the district
 50 court is held is made applicable, the law
 51 applied in the District of Columbia shall govern
 52 proceedings in the District Court of the United
 53 States for the District of Columbia. Whenever

NOTE:- Subdivision (aa) is
 a proposal by the Chairman
 for the Style Committee.
 Query:- Should executory
 writs of mandamus issued
 without express statutory
 authorization be preserved
 in Rule 83 or Rule 84.

See Dobie on Federal Pro-
 cedure. PP. 327, 328.